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Cathryn Costello & Mark Freedland (eds), **Migrants at Work: Immigration & Vulnerability in Labour Law**, Oxford: Oxford University Press, 2014, 512 pp, hb £70.00.

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In devising the research project that has resulted in the publication of this excellent collection, Cathryn Costello and Mark Freedland have identified a significant gap in the existing literature. As they explain in their introductory chapter, labour migration and its regulation have a major impact on labour law, but the extent of the impact is widely under-appreciated. With some notable exceptions, scholars of labour law don't always tend to give consideration to migration, migration law and their intersection and interaction with labour law, and where they do not, their understanding of the latter is likely to be incomplete.

With the aim of redressing this oversight, and further elaborating its importance, Costello and Freedland have here invited a group of scholars to address the question, how do migration law and immigration impact on labour law? The scholars have been drawn from a range of jurisdictions and disciplines, and the resulting contributions deal from a variety of perspectives with the rights of migrant workers or particular groups of workers under international law and within human rights regimes and domestic and regional legal systems, and with questions on the approach taken by particular governments to the regulation of migration and to associated matters including irregular work and human trafficking.

The editors' introduction does a marvellous job of organising the material into a coherent whole, and, at the same time, sketching out the contours of a new field of study. Having surveyed the many explanations offered by contributors of the nature of the impact of migration and migration law on labour law, the editors propose that the various types of impact identified may usefully be grouped together with reference to the notion of *division*. Migration and migration law may be understood, in the first instance, to create or accentuate divisions in the 'objectives' of labour law. Labour law as a field is shaped by a range of policy objectives and, most importantly, by the aim of worker protection or emancipation, on the one hand, and of regulating labour markets so as to achieve a range of market objectives, on the other: greater flexibility, maximal market participation. Migration and immigration law can tend to intensify divisions and tensions between these two types of objective. In the case of 'posted' workers, for example, European Union law has developed so as to bring into direct conflict the aim of protecting workers' terms and conditions of employment, and the aim of increasing market access, or labour supply, by facilitating cross-border service provision. In a series of decisions dating from 2007/08, the Court of Justice interpreted the freedom to provide services so as to comprise a right to pay workers posted to a host state less than local rates. It thereby judged the objective of increasing market access across national borders to trump that of protecting labour standards and wage levels by means of domestic law, or local or national collective agreement. (For explanation, see the contribution by Engblom in the volume (esp. 344-50))

As the editors go on to explain, immigration and migration law can also be understood to create or intensify divisions between the *subjects* of labour law. A disintegration of the 'standard employment model' is one of the principal trends observable in the world of work since the 1980s. Throughout the developed world, the decline of manufacturing and rise of services, the weakening of trade unions, and the pursuit by employers of ever-greater flexibility, have each contributed to the marginalization of full-time, open-ended contracts of employment and the proliferation instead of a wide variety of contractual forms and attendant

‘statuses’: fixed-term employee, agency worker, casual worker, zero-hours worker, etc. Because of the way in which it determines the eligibility of individuals to enter into and remain in working relationships, migration law creates additional kinds of ‘personal status’ – temporary worker, overseas domestic worker, irregular worker – which interact with labour law’s own determination of work status in varied and complex ways. As a result, increasingly diverse sets of rules apply to increasingly diverse categories of workers: the application of labour law becomes, as the editors put it, a ‘patchwork fragmented according to the personal work status of each worker’ (10).

Having explained the relevance of the notion of ‘division’ to their project, Costello and Freedland raise the question of the possibility of ‘re-integrative’ responses from within labour law: responses which would allow for the pursuit of worker protective or emancipatory *and* labour market objectives, in a way which protected the rights of both migrant and local workers. The suggestion of the editors here is that policies and laws which are focused specifically on migrant workers are less likely to be re-integrative than those which target sectors within which migrant workers are clustered, but address the employment relations of locals as well as migrants. Later in the book, ACL Davies draws a similar distinction between what she calls an ‘immigration control’ and an ‘employment’ policy agenda, illustrating why a shift in policy priorities from the latter to the former may ultimately serve to damage the interests of the majority of workers, migrant and local: ‘simply tackling the worst forms of exploitation will not guarantee decent working conditions for all’ (79).

Taken as a whole, the collection is an important one for the development of labour law scholarship and, at the same time, a very interesting and thought-provoking read. For me, one of the most engaging aspects lay with the variety of approaches and methods adopted by the contributors in addressing the field sketched out by the editors. In inviting scholars to consider the nature of the impact of migration and migration law on labour law, the editors placed the focus of the investigation squarely on *labour markets*. Migration can affect labour supply and demand; it can increase labour market segmentation and the role of intermediaries in the labour supply chain (7-8). Migration law affects levels of migration and the ‘types’ of labour available for sale, defined according to the skills and characteristics of the migrant workers and their personal work statuses (8). One of the real strengths of the book, in my opinion, was the way in which it demonstrated the importance of understanding and analysing labour law and labour markets as part of the broader *political economy*. Several of the contributors did this quite explicitly; others seemed to treat it as given that labour law is at once shaped by and, in turn, gives shape to the political economy of which it forms part.

In employing a political economy framework, these scholars remained faithful, I would suggest, to a long tradition of labour law scholarship which has sought, since the early twentieth century, to understand labour laws as part of an historical process, and as the outcome of political conflicts (see further R Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (OUP 2014), ch 8). The forefathers of the discipline, Hugo Sinzheimer and Otto Kahn-Freund, understood themselves to be developing and employing a particular type of critical socio-legal methodology, analysing the law with reference to a sociologically informed understanding of employment relations, the wider economy, and the condition of the worker within it. From the 1960s, British scholars in the field tended to adopt a similar approach (often referred to as ‘law in context’), seeking to explain the nature of the law with reference to a number of factors over time: economic developments and policies, the changing nature of the state, the character and strategies of employers and labour movements. However frequently these scholars may have turned their attention to questions of

employment levels, skills and training, discrimination and so on, they did not tend to use the language of labour *markets* when doing so. It was not until the 1980s and, to a greater extent, the late 1990s and 2000s that scholars began increasingly to frame their enquiries with reference to markets and the market-regulatory function of the law. In doing so, they reacted in part to the changing policy priorities and frames of reference of government, and in part to the growing prominence of a type of economic reasoning which characterised worker-protective labour laws, almost as a matter of course, as problematic barriers to flexible and efficient labour markets. Recognising the need to challenge such lines of reasoning, scholars found themselves drawn into debates and forms of discourse which tend to conceive of particular labour laws – analyse and assess those laws – with reference to their ‘efficiency’, their propensity to accentuate or alleviate labour market segmentation, and their likely impact on ‘market access’ and unemployment levels.

As is so well demonstrated within the pages of this book, the advantage of a political economy framework is that it allows scholars of labour law to engage with such market-focused arguments *critically*, without giving up the ‘vocational’ concern with social justice, democracy and substantive equality which has always been definitive of labour law as a distinct field of scholarship (see H Collins, ‘Labour Law as a Vocation’ (1989) 105 LQR 468). As such, it serves as an attractive alternative to the ‘pure economic theory’ forms of reasoning that are typical of ‘law and economics’ scholarship. In conceiving of markets in the abstract – as functioning according to the same set of rules regardless of place and time – and of market actors as purely economically motivated, the ‘law and economics’ approach can tend to obscure the role of the state, and of law, in giving specific form to labour markets and labour market institutions, and, of course, grossly to underemphasise the importance of any interest or value other than an economically rational one. A political economy framework, in contrast, allows for questions to be asked of labour markets as they are configured within particular economies, drawing the scholar’s attention directly to the state and to public policy as an expression of struggles between different actors over political influence (see the discussion by G Menz at 49-50). It allows, importantly, for the impact of particular laws and policies to be considered over a period of real time, and not only in the ‘snapshot’ view presented by an economic model (see J Robinson, ‘Time in Economic Theory’ (1980) 33 *Kyklos* 219). And for these reasons, it allows for the utilization of the kind of comparative and historical methodologies with which scholars of labour law have long been familiar.

A brief discussion of a few of the contributions to the *Migrants at Work* collection might help to illustrate these points. Two of the chapters are written by professors of political economy. In, ‘Employers and Migrant Legality: Liberalization of Service Provision, Transnational Posting, and the Bifurcation of the European Labour Market’, Georg Menz seeks to explain how migration can promote the transformation of formerly tightly organized labour markets and, secondly, how such transformation is related to structural changes in the role of the nation state. Drawing, unusually, on Poulantzas to articulate a theory of the state and public policy as strongly influenced by the ‘predominant and hegemonic’ classes, he also examines the role of *employers* and employers’ associations in ‘driving forward’ the liberalization of labour migration and service provision. Labour migration can be used, he argues, as a *conscious employer strategy* in helping to deregulate labour markets. In, ‘Immigration and Labour Market Protectionism: Protecting Local Workers’ Preferential Access to the National Labour Market’, Martin Ruhs addresses the matter of the fundamental tension between the policy objective of expanding employers’ access to migrant workers and, on the other hand, protecting the employment prospects and conditions of domestic workers. He begins by making the important observation that whether and how immigration affects the wages and

employment opportunities of domestic workers and the profit margins of employers is an empirical question that *critically depends on the time-frame adopted*. He thereby highlights the shortcomings of modes of analysis which work on the assumption that resources are *fixed*, so that, for example, if employers hire migrant labour, the number of jobs for domestic workers will correspondingly decrease. As Ruhs suggests, while it may be the case that current resources are fixed, future resources are categorically not: action taken today may serve to increase, as well as to decrease, the quantity of resources available at a later date. A second point of general importance made by Ruhs is that while employers and other actors may seek to shape the institutional and regulatory framework within which they operate (as illustrated by Menz), their interests and strategies are critically influenced and constrained by that same framework. So, for example, Ruhs points out that it is quite understandable that employers in the construction industry should seek to hire migrant workers, given the lack of a comprehensive vocational education and training system in the UK and the consequent skills shortage among local workers.

The majority of the contributors to the volume are scholars of labour law, several of whom adopt a political economy framework to equally illuminative effect (including Sandra Fredman and Einat Albin; see also the contribution from Mary Crocke, Sean Howe and Ron McCallum). Judy Fudge and Kendra Strauss begin their fascinating discussion of ‘Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude’ from a definition of national labour markets as: ‘socially constructed in and through the relations between capital, labour, and the state, which crystallize into durable institutional structures that are simultaneously sites of struggle’ (162, citing J Peck, *Work-Place: The Social Regulation of Labor Markets* (Guilford Press 1996)). Like other contributors to the collection, they emphasise the ways in which the situation of some migrant workers as unusually dependent upon a particular employer, and therefore ‘unfree’ and vulnerable to ‘extreme exploitation’, is created by the state. In common with others, the authors resist the language of ‘slavery’ in this context: unfreedom is not the ‘ontological state’ of the worker, they explain, but rather ‘an attribute of the work relation and of related multi-level structures that arise from, and shape, the operation of social and economic power’ (164).

Such is its richness in terms of subject matter, analysis and argument that the *Migrants at Work* collection can no doubt be read and enjoyed for several different reasons. Together, the contributors and editors have made a very convincing case for the importance of migration and immigration law to scholarly investigations of labour law, as was their intention. Over and above that, they have addressed – mostly implicitly but nonetheless very fruitfully – the question of how scholars can best approach the study of labour law and labour markets today.